SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ROBERT CHAPMAN p/k/a CHAPMAN ROBERTS
And CHAPWON ENTERPRISES, INC.,

Index No. 157736/15

Plaintiffs,

-against-

DECISION/ORDER

PIERRE DANIEL FAUSTIN and PIERRE D. FAUSTIN, CPA PC,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiffs Robert Chapman p/k/a Chapman Roberts ("Chapman") and Chapwon Enterprises, Inc. ("Chapwon") commenced the instant action seeking to recover damages arising out of defendants Pierre Daniel Faustin ("Faustin") and Pierre D. Faustin, CPA PC's ("Faustin PC") failure to provide proper accounting services to plaintiff. Defendants now move for an Order pursuant to CPLR § 3211 dismissing plaintiffs' amended complaint. For the reasons set forth below, defendants' motion is granted.

The relevant facts according to the amended complaint are as follows. Plaintiff Chapman met Faustin over twenty-five years ago and initially employed Faustin as his accountant. Thereafter, Faustin approached Chapman about expanding his role from

Chapman's accountant to an adviser and manager of Chapman's entertainment-related income in consideration for referrals to Chapman's associates in the entertainment industry and Chapman agreed to said relationship.

At that time, Chapman was the owner of 32.23 acres of land in the township of Damascus, County of Wayne, State of Pennsylvania (the "subject premises"). As Chapman's accountant, Faustin regularly remitted property tax payments to Wayne County on Chapman's behalf for the subject premises. At some point, Chapman received a notice from Wayne County of a pending tax sale of the subject premises and he asked Faustin to remit the tax payment for the subject premises from the funds Faustin held for Chapman as his business manager to avoid the sale. Faustin failed to remit the tax payment and Chapman lost the subject premises.

In or around October 2013, Chapman demanded an accounting of the previous three years of statements for Chapwon. In response, Faustin produced computerized ledgers for the years 2011, 2012 and 2013. Thereafter, Chapman filed an action in New York County Small Claims Court to recover the amount of $5,000.00, representing the attorney's fees Chapman paid to a law firm to appeal Wayne County's decision to sell the subject premises based on Faustin's failure to provide proper accounting services to Chapman (the "small claims action"). In or around July 2014, Small Claims Court awarded Chapman $2,500.00.

Thereafter, plaintiffs commenced the instant action asserting causes of action for negligence, negligent infliction of emotional distress, violation of General Business Law § 349, breach of fiduciary duty, an accounting, fraud, unjust enrichment, a constructive trust and accounting malpractice arising out of defendants' alleged failure to provide proper accounting services to plaintiffs. Defendants now move to dismiss the amended complaint.

On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept. 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977) (quoting *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956)).

In the instant action, this court finds that the amended complaint must be dismissed on the basis of *res judicata*. The doctrine of *res judicata*, or claim preclusion, "provides that as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action." *Singleton Mgt. v. Compere*, 243 A.D.2d 213, 215 (1st Dept 1998). This doctrine is applied "when the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first." *Id.* Further, even if certain claims were not litigated in the prior action, claims brought later will be barred by *res judicata* if they "could have been asserted in the first action and [plaintiff] had a full and fair opportunity to litigate those claims in that action." *Santiago v. New York Board of Health*, 8 A.D.3d 179, 181 (1st Dept 2004).

This court finds that the amended complaint is barred by the doctrine of *res judicata* on the grounds that plaintiff Chapman could have asserted the claims in this action against defendant Faustin in the small claims action but failed to do so and the claims in this action are

essentially identical to the claim put forth in the small claims action. In the small claims action, plaintiff sought damages against Faustin for failing to provide proper accounting services which allegedly resulted in plaintiff's loss of the subject premises. Here, plaintiff Chapman again seeks to recover against Faustin and Faustin PC for failing to provide proper accounting services which allegedly resulted in plaintiff's loss of the subject premises. Although plaintiffs' amended complaint asserts many causes of action and purports to assert new theories of liability against defendants based on the alleged existence of a joint venture partnership and other actions taken by defendants, the crux of each of plaintiffs' claims against defendants is that they failed to render proper accounting services to the plaintiff resulting in the loss of the subject premises. Thus, the amended complaint is barred by the doctrine of *res judicata*. Indeed, the doctrine of *res judicata* holds that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 354 (1981). "[W]hen alternative theories are available to recover what is essentially the same relief for harm arising out of the same or related facts such as would constitute a single 'factual grouping', the circumstance that the theories involve materially different elements of proof will not justify presenting the claim by two different actions." *O'Brian*, 54 N.Y.2d at 357.

Plaintiffs' assertion that dismissal of the amended complaint on *res judicata* grounds is improper pursuant to New York Civil Court Act ("CCA") § 1808 is without merit. CCA § 1808 provides as follows:

> Judgment obtained to be res judicata in certain cases.
>
> A judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action

> or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article.

"While the relevant statute, § 1808, has always spoken of 'res judicata' in the caption, what it really intends to bar is the application of the 'collateral estoppel' doctrine to a small claims judgment. The more modern description of those concepts is 'claim preclusion' in place of 'res judicata' and 'issue preclusion' in place of 'collateral estoppel.'" Siegel, Practice Commentaries, McKinney's NY City Civ. Ct. Act § 1808. It is well-settled that § 1808 was "not intended to divest the small claims judgment of its 'claim preclusion' effect, which is the more technical meaning of '*res judicata*,' but rather of its 'collateral estoppel' or 'issue preclusion' use." *Omara v. Polise*, 163 Misc.2d 989, 990 (App. Term 1995). Thus, as it is clear that a small claims judgment can have *res judicata* effect, the amended complaint must be dismissed on that ground.

Accordingly, defendants' motion to dismiss the amended complaint is granted. The amended complaint is dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 2/23/16

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.